

SECOND REGULAR SESSION

# SENATE BILL NO. 1248

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CALLAHAN.

Read 1st time February 12, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4254S.02I

## AN ACT

To repeal section 105.520, RSMo, and to enact in lieu thereof eleven new sections relating to certain employment rights for emergency response personnel.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 105.520, RSMo, is repealed and eleven new sections enacted in lieu thereof, to be known as sections 105.520, 105.1325, 105.1328, 105.1331, 105.1334, 105.1337, 105.1340, 105.1343, 105.1346, 105.1349, and 105.1352, to read as follows:

105.520. **Except for employees provided for in sections 105.1325 to 105.1352, any city, town, or any political subdivision that has adopted the provisions of sections 105.1325 to 105.1352,** whenever [such] proposals are presented by the exclusive bargaining representative to a public body, the public body or its designated representative or representatives shall meet, confer and discuss such proposals relative to salaries and other conditions of employment of the employees of the public body with the labor organization which is the exclusive bargaining representative of its employees in a unit appropriate. Upon the completion of discussions, the results shall be reduced to writing and be presented to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.

**105.1325. 1. Sections 105.1325 to 105.1352 shall be known and may be cited as the "Missouri Emergency Response Personnel Strike Prevention and Arbitration Act".**

**2. Notwithstanding the provisions of section 105.520, collective bargaining between emergency response personnel and their respective appropriate legislative bodies shall be governed by the provisions of sections 105.1325 to 105.1352, provided that such provisions are adopted pursuant to section 105.1352.**

**105.1328. It is the public policy of this state that, where the rights of public**

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

employees to strike is clearly prohibited, there should be an alternative mechanism to speedily resolve all disputes concerning the working conditions of employees in a fair, efficient, and effective manner. The provisions of sections 105.1325 to 105.1352 shall be liberally construed to effectuate this policy.

105.1331. As used in sections 105.1325 to 105.1352, unless the context clearly requires otherwise, the following words and terms mean:

(1) "Appropriate legislative body", a city council, municipal, or county governing body, board or authority, or the administrative, legislative, or other governing body of any employer as defined in this section with authority to approve appropriations, make rules and regulations, and otherwise exercise appropriate legislative power and discretion;

(2) "Appropriate unit", a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned;

(3) "Employer", any political subdivision of the state, including, without limitation, any town, township, city, county, borough, district, including constitutional charter cities and counties, and any person designated by the employer to act in its interest in dealing with employees;

(4) "Exclusive bargaining representative", an organization which has been designated or selected by a majority of employees in an appropriate unit as the representative of such employees in such unit for purposes of collective bargaining;

(5) "Exclusive representative", the labor organization which has been certified for the purposes of sections 105.1325 to 105.1352 by the state board of mediation as the exclusive bargaining representative of the employees in an appropriate unit, or is recognized by an employer prior to the effective date of this section as the exclusive representative of the employees in an appropriate unit;

(6) "Emergency response personnel", full-time, salaried members of any regularly constituted fire department or ambulance department in any county, city, town, village, fire protection district, ambulance district, or any other political subdivision of this state;

(7) "Good faith bargaining", negotiations between two parties for the purpose of reaching an agreement;

(8) "Impasse", the failure of the appropriate legislative body and the exclusive bargaining representative to reach an agreement in the course of negotiations;

(9) "Labor dispute", any controversy concerning wages, hours, or other terms and conditions of employment or concerning the association or representation of

persons in negotiating, fixing, maintaining, changing, or seeking to arrange wages, hours, or other terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee;

(10) "Labor organization", any organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other terms and conditions of employment;

(11) "Mediation", assistance by an impartial third party to reconcile an impasse between the exclusive bargaining representative and the appropriate legislative body regarding wages, hours, and other terms and conditions of employment through interpretation, suggestion, and advice to resolve the impasse;

(12) "Person", one or more individuals, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(13) "Public employee" or "employee", any employee of an employer as defined in this section, and shall include any individual whose work has ceased as a consequence of, or connection with, any unfair labor practice or concerted employee action;

(14) "Strike", the concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence, in whole or in part, from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions or compensations, or the rights, privileges or obligations of employment. Nothing in the provisions of sections 105.1325 to 105.1352 shall be construed to limit, impair, or affect the right of any public employee to the expression or communication of a view, grievance, or complaint or opinion on any matter related to the conditions or compensation or public employment or their betterment, so long as such expression or communication is not designed to, and does not interfere with, the full, faithful, and proper performance of the duties of employment.

105.1334. 1. Emergency response personnel may bargain collectively about wages, hours, and other conditions of employment with the appropriate legislative body. Emergency response personnel shall be represented in the collective bargaining by an exclusive bargaining representative chosen by the employees under the rules of the state board of mediation.

2. Any employee representative in existence on the effective date of this section shall continue, without the requirement of an election and certification, until such time as a question concerning representation is appropriately raised under the rules of the state board of mediation or until a challenge by the appropriate legislative body, a member of the unit, or an employee organization

has been raised in which the state board of mediation has found the unit not appropriate. However, the appropriateness of the unit shall not be challenged until the expiration of any collective bargaining agreement in effect on the effective date of this section.

105.1337. Representatives selected by the emergency response personnel in a unit certified for collective bargaining purposes shall be the exclusive representative of all the employees in the unit to bargain on wages, hours, and other terms and conditions of employment.

105.1340. 1. Within ten days of the receipt of a written request to meet and collectively bargain from the exclusive bargaining representative, the appropriate legislative body shall meet and collectively bargain in good faith with the exclusive bargaining representative.

2. Whenever wages or other matters requiring appropriations of money by the appropriate legislative body are to be included in the collective bargaining conducted pursuant to the provisions of sections 105.1325 to 105.1352, the exclusive bargaining representative shall send a written request to meet and collectively bargain at least one hundred and twenty days before the last day on which funds can be appropriated to cover the period of any contract period which is the subject of collective bargaining.

105.1343. 1. If the exclusive bargaining representative and the appropriate legislative body reach an impasse within thirty days of the date negotiations began, all issues at impasse shall be submitted to a panel of arbitrators as provided in this section. The submission of issues to the panel of arbitrators may be delayed for any period of time agreed upon by the exclusive bargaining representative and the appropriate legislative body.

2. Prior to invoking arbitration, the parties shall make every reasonable effort to settle their dispute through good faith collective bargaining; such effort may include mediation, provided an impartial mediator can be appointed by agreement of the parties. If a mediator is appointed, the mediator's function shall be to assist all parties to reach a voluntary agreement. The mediator may hold separate or joint conferences as the mediator deems expedient to effect a voluntary, amicable, and expeditious adjustment and settlement of the differences and issues between the parties. The mediator shall make no public recommendation on any negotiation issue in connection with the performance of the mediator's service or make any public statement or report which evaluates the merits of the position of the parties. The mediator may recommend or suggest to the parties a proposal or procedure which in the mediator's judgment might lead to a settlement.

3. If issues at impasse are to be submitted to a panel of arbiters, the panel shall consist of one arbiter selected by the appropriate legislative body, one arbiter selected by the exclusive bargaining representative and one arbiter, who shall be an impartial, competent, and reputable person, selected by the other two arbiters. The exclusive bargaining representative and the appropriate legislative body shall select their own arbiter within five days after it is determined that impasse issues are to be submitted to arbitration. The exclusive bargaining representative and the appropriate legislative body shall each send a written notice of the name and address of the arbiter selected by such person to the other party. If the arbiter selected by the exclusive bargaining representative and the arbiter selected by the appropriate legislative body are unable to agree upon a third arbiter, the third arbiter shall be selected in the following manner:

(1) The American Arbitration Association shall prepare a list of names of seven persons to act as the third arbiter;

(2) The appropriate legislative body and the exclusive bargaining representative shall alternately strike one name from the list until six names have been struck;

(3) The person whose name remains shall be the third arbiter;

(4) The person chosen as the third arbiter shall be the chairman of the panel of arbiters. Formal arbitration shall commence within fifteen days of the selection of the chairman of the panel of arbiters. Each party shall submit a final offer on each separate unresolved item to the arbitration panel and the other party.

4. In making any decision pursuant to the impasse procedures authorized by this section, the arbitrators shall give weight to the following factors:

(1) The lawful authority of the public body;

(2) Stipulations of the parties;

(3) The interests and welfare and tax rates of the citizens;

(4) The financial ability of the public body to meet the costs of any items to be included in the contract;

(5) Comparison of wages, hours and terms, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and terms, and conditions of employment of other persons performing similar services in the public and private sectors in the same area;

(6) The average consumer prices for goods and services, commonly known as the "cost of living" or the consumer price index;

(7) The overall compensation presently received by the employees involved in the arbitration, including, but not limited to, wages, health and life insurance, vacations, holidays, and similar benefits;

(8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding;

(9) The effect of an agreement on the ability of the public body to provide public services at current levels;

(10) Such other factors which are normally or traditionally taken into consideration in the determination of wages, hours, terms, and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public service or in private employment.

5. The arbitration panel may hold hearings, administer oaths, examine witnesses and documents, take testimony, and receive evidence. The panel may issue subpoenas as provided in section 536.077, RSMo. Within a reasonable time after the conclusion of any hearing or the taking of evidence, the panel shall determine that either the final offer of the appropriate legislative body or the final offer of the exclusive representative on each separate issue shall be incorporated into the final collective bargaining agreement. The arbitration panel may not amend the offer of either party on any one issue. The decision of the panel shall be deemed to be the collective bargaining agreement between the parties and the public body or its designated representatives shall present this agreement to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill, or other form required for adoption, modification, or rejection.

6. The cost of arbitration shall be borne equally by the appropriate legislative body and exclusive bargaining representative.

7. Failure of a legislative body to approve a collective bargaining agreement submitted to it shall not be in conflict with the good faith bargaining requirements of sections 105.1325 to 105.1352.

105.1346. 1. It is unlawful for any bargaining unit, subject to the provisions of sections 105.1325 to 105.1352, to strike. If a strike occurs, all employees who participate in the strike shall be automatically terminated and, at the conclusion of the strike, may be rehired at the discretion of the employer. Any employee who is terminated pursuant to this section and is later rehired shall be rehired only under the same conditions applicable to an employee who had never been employed by such employer or any other public employer, and such rehired employee shall lose all seniority, tenure and pay grade steps derived by virtue of the employee's past employment and may only gain such seniority, tenure and pay grade steps in the same manner as any new employee with no prior experience. The provisions of this section regarding termination and hiring of

employees may not be part of the negotiated settlement of any strike.

2. In addition to provisions of subsection 1 of this section, the employer or employee organization may institute in the circuit court of jurisdiction where the strike occurs an action for injunctive relief. Where an employee or an employee organization willfully disobeys a lawful order of the court of competent jurisdiction issued for a violation of the provisions of sections 105.1325 to 105.1352, the punishment for each day that the contempt persists may be a fine as determined by the court. The court may fine or imprison, or both fine and imprison, a striking employee who disobeys an injunction.

105.1349. Any labor organization which is certified as the exclusive representative of the employees of an appropriate unit and which thereafter is found to have ordered, called for, supported, or participated in a strike by the employees in a bargaining unit shall, upon such action, forfeit its status as the exclusive representative of such employees for a period of three years. The forfeiture of status as the exclusive representative of the employees in a bargaining unit may not be waived by, or become the subject of, any collective bargaining agreement.

105.1352. 1. The provisions of sections 105.1325 to 105.1352 may be adopted by any city, town, or any political subdivision to which sections 105.1325 to 105.1352 applies in either of the following methods:

(1) The appropriate legislative body may adopt the provisions of sections 105.1325 to 105.1352 by legislative action in the form of a resolution or ordinance; or

(2) Upon receiving a petition signed by the lesser of five percent, or twenty thousand, of the registered voters voting in the last preceding general election in such city, town, or political subdivision, the appropriate governing body of such city, town, or political subdivision shall submit the question to the voters at the next regular election in the political subdivision. If a majority of the votes cast at the election vote in favor of the adoption of the provisions of sections 105.1325 to 105.1352, then such governing body shall place the provisions of sections 105.1325 to 105.1352 into effect within thirty days after the beginning of the first fiscal year of such city, town, or political subdivision after such election. The question shall be submitted to the voters in substantially the following form:

Shall ..... (Insert name of political subdivision) adopt the provisions of state law which are applicable to emergency response personnel, which allow collective bargaining if a majority of the affected employees favor representation by an employee labor organization and which preserve the prohibition of strikes and penalties therefor?

☐ YES

☐ NO

2. The provisions of sections 105.1325 to 105.1352 may be repealed in any city, town, or political subdivision in which the provisions of sections 105.1325 to 105.1352 have been in effect for a period of at least one year, if a petition is signed by the lesser of five percent or twenty thousand of the registered voters voting in the last preceding general election in such city, town, or political subdivision calling for an election to repeal the adoption of the provisions of sections 105.1325 to 105.1352. The appropriate governing body of such city, town, or political subdivision shall submit the question to the voters at the next regular election in the political subdivision. If a majority of the votes cast at the election vote in favor of the repeal of the provisions of sections 105.1325 to 105.1352, then the provisions of sections 105.1325 to 105.1352 shall become null and void as to such city, town, or political subdivision. The question shall be submitted to the voters in substantially the following form:

Shall ..... (Insert name of political subdivision) repeal the adoption of the provisions of state law which are applicable to emergency response personnel, which allow for collective bargaining if a majority of the affected employees favor representation by an employee labor organization and which preserve the prohibition of strikes and provides penalties therefor?

☐ YES

☐ NO

3. Upon adoption of the provisions of sections 105.1325 to 105.1352 by any political subdivision in this state, emergency response personnel, through an exclusive bargaining representative, shall have the right to bargain collectively with their appropriate legislative body as to wages, hours, working conditions and other terms, and conditions of employment. If the provisions of sections 105.1325 to 105.1352 are adopted pursuant to this section, the provisions of this section shall be applicable to the political subdivision notwithstanding the fact that such political subdivision, either before or after the adoption of sections 105.1325 to 105.1352 has adopted or adopts a home rule charter.

4. If an election has been held in any city, town, or political subdivision where the question was submitted for either the adoption or repeal of the adoption of the provisions of sections 105.1325 to 105.1352, the same question shall not be submitted to the voters at another election for at least one year after an election where the question had been submitted.